COLORADO ENVIRONMENTAL COALITION

IBLA 94-223 Decided December 17, 1997

Appeal from a Decision of the State Director, Colorado, Bureau of Land Management, denying protest to issuance of oil and gas lease. COC-55739.

Affirmed.

1. Environmental Quality: Environmental Statements– National Environmental Policy Act of 1969: Environmental Statements--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease--Wilderness Act

   The BLM is not required to prepare a site-specific environmental impact statement prior to issuing an oil and gas lease when BLM previously analyzed the significant environmental consequences of leasing the land and declined to designate the land for further study and protection as a wilderness study area under section 603 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. § 1782 (1994).

APPEARANCES: Norman J. Mullen, Esq., Colorado Environmental Coalition, Grand Junction, Colorado, for Appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Colorado Environmental Coalition (CEC) has appealed from a Decision of the State Director, Colorado, Bureau of Land Management (BLM), dated November 24, 1993, denying its protest to issuance of an oil and gas lease for public lands in the Vermillion Basin (North Unit) in northwestern Colorado. The CEC had previously supported the designation of these lands as a wilderness area under the Wilderness Act, as amended, 16 U.S.C. §§ 1131-1136 (1994).

By Notice of Competitive Lease Sale dated September 23, 1993, BLM notified the public that it intended to competitively lease parcel No. COC-55739 and five other parcels of public land in the Vermillion Basin (North Unit). Parcel No. COC-55739 consists of 1,284.56 acres of land in secs. 4 and 5, T. 11 N., R. 98 W., Sixth Principal Meridian, Moffat County, Colorado, in BLM's Little Snake Resource Area, Craig District. On November 3, 1993, CEC protested the issuance of the six leases, contending that it was "not in the public interest to sell these leases in an area proposed for wilderness before Congress has a chance to pass on the suitability of the area for wilderness." (Letter to BLM, dated Nov. 8, 1993.) The CEC feared that, "[i]f BLM issues leases in this area, it may be precluding Congress' opportunity to consider and designate this area for protection." (Letter to BLM, dated Oct. 29, 1993, at 1.) In addition, it asserted that the environmental impacts of oil and gas exploration and development "have not been adequately addressed [by BLM]" and that unnecessary and undue degradation of the affected public lands will occur. (Letter to BLM, dated Nov. 8, 1993.)

The competitive sale was held on November 10, 1993, but no bids were submitted. A simultaneous lease drawing was conducted on November 16, 1993. The noncompetitive lease offer submitted by the Liberty Petroleum Corporation (Liberty) was drawn with first priority for parcel No. COC- 55739. No offers were filed for any of the other parcels.

In his November 1993 Decision, the State Director denied CEC's protest to issuance of a lease for parcel No. COC-55739, as well as the other parcels challenged by CEC. The State Director noted that, at the time of its initial inventory in 1979, BLM had declined to designate the area sought to be leased as a wilderness study area (WSA) because "the Vermillion Basin [(North Unit)] did not meet the criteria required by the Wilderness Act for wilderness area designation. In particular, it did not meet the roadless criteria and was found to be heavily impacted by man's imprints." (Decision at 1.)

The State Director then concluded that issuance of a lease conformed with BLM's April 26, 1989, Little Snake Resource Management Plan (RMP), governing activities on public lands in the Little Snake Resource Area. The issuance also conformed to BLM's Oil and Gas Plan Amendment to the Little Snake RMP, adopted November 5, 1991, which specifically governed oil and gas leasing and related matters on those lands, since they "provide[d] for oil and gas leasing, subject to site-specific [protective] stipulation[s]." (Decision at 1.) He concluded that precluding leasing "would require an RMP amendment involving public input, review, and protest opportunities," but that BLM had no information at that time indicating that such an amendment was necessary. Id.

Finally, the State Director held that CEC had failed to demonstrate "that the stipulations [to be incorporated in the lease] are not adequate to protect the resources of the area or that unnecessary and undue degradation will occur because of leasing." Id.

The State Director concluded that BLM would lease parcel No. COC-55739 to Liberty and would make the other parcels available for noncompetitive leasing for a period of 2 years after November 11, 1993. (Decision at 2.) However, he stated that BLM would "defer issuance of th[at] * * * lease until the opportunity to file a formal appeal is exhausted and the matter of a stay is resolved." Id.

The CEC filed a timely notice of appeal with BLM, challenging the Decision only to the extent that it had denied its protest to issuance of a lease of parcel No. COC-55739. It noted that it might, within 30 days, request the Board to stay the effect of the Decision. However, there is no record that CEC did so. Further, although BLM was thus free to lease that parcel, we are informed that no lease has been issued.

On appeal, CEC contends that BLM's Decision to issue a lease without a No Surface Occupancy (NSO) stipulation, "without first complying with [section 102(2)(C) of] the National Environmental Policy Act of 1969 (NEPA)[, 42 U.S.C. § 4332(2)(C) (1994),] violates Federal law." (Statement of Reasons (SOR) at 2.) The CEC argues that

> because the lands in the appealed parcel are roadless and qualify for inclusion in the National Wilderness Preservation System, and because issuance of a non-NSO lease means that the lessee obtains vested and irrevocable rights to drill on and develop the lease, the act of leasing these lands without [an] NSO stipulation[] constitutes an irretrievable commitment to developing these lands. Such a commitment requires BLM to perform adequate, site-specific NEPA analysis.

(SOR at 3.) The CEC recognizes that, in January 1991, BLM analyzed the environmental impacts of oil and gas leasing on 5.145 million acres of public land located in all or part of seven resource areas in Colorado. Included in these areas is the Little Snake Resource Area, which encompasses the land in parcel No. COC-55739. However, CEC maintains that the document did not adequately address the site-specific impacts of leasing any particular lands, including the effects of any resulting oil and gas exploration and development. Thus, CEC argues that BLM must now perform a "site-specific environmental impact statement [EIS]." (SOR at 9.)

At the outset, we note that the time for taking an appeal from BLM's Decision that the Vermillion Basin (North Unit), including the land at issue here, was not suitable for designation as a WSA has long since passed. The BLM provided notice to the public, including CEC, of its Final Initial Wilderness Inventory Decision by publishing notice of it in the Federal Register on August 31, 1979. See 44 Fed. Reg. 51339 (Aug. 31, 1979). The CEC had 30 days following the date of publication to file an appeal therefrom, pursuant to 43 C.F.R. § 4.410(a). It did not do so. Thus, we conclude that the doctrine of administrative finality precludes CEC from later challenging BLM's decision. See San Juan County Commission, 123 IBLA 68, 71 (1992), and cases cited. We know of no legal mandate that

requires BLM to manage the Vermillion Basin (North Unit) area on the basis that, although finally rejected as a WSA, it might, at some unspecified future time, be designated by Congress as a protected wilderness area. See Southern Utah Wilderness Alliance (SUWA), 128 IBLA 52, 65-66 (1993); SUWA, 122 IBLA 17, 21 (1992).

We turn to the question of whether BLM violated section 102(2)(C) of NEPA by failing to prepare a site-specific EIS, prior to deciding whether to lease parcel No. COC-55739 for oil and gas purposes.

[1] Since an EIS has been prepared, addressing the environmental consequences of oil and gas leasing in the Little Snake and other resource areas, the issue becomes whether that EIS satisfies section 102(2)(C) of NEPA. In order to do so, an EIS must primarily be a "detailed statement." 16 U.S.C. § 4332(2)(C) (1994). It must reflect that a Federal agency has "taken a 'hard look' at environmental consequences" of a proposed action, Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976), and thus not "swept [difficult environmental issues] under the rug," Silva v. Lynn, 482 F.2d 1282, 1285 (1st Cir. 1973). In general, it must fulfill the primary mission of NEPA, which is to ensure that a Federal agency, in exercising the substantive discretion afforded it to approve or disapprove a project, is fully informed regarding the environmental consequences of such action. See 40 C.F.R. § 1500.1(b) and (c); Natural Resources Defense Council v. Hodel, 819 F.2d 927, 929 (9th Cir. 1987).

In deciding whether an EIS promotes informed decisionmaking, it is well settled that a rule of reason will be employed such that the question becomes "whether an EIS contains a 'reasonably thorough discussion of the significant aspects of the probable environmental consequences.'" State of California v. Block, 690 F.2d 753, 761 (9th Cir. 1982) (quoting from Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974)).

When BLM has complied with the procedural requirements of section 102(2)(C) of NEPA, by actually taking a hard look at all of the environmental impacts of a proposed action, it will be deemed to have complied with the statute, regardless of whether a different substantive decision would have been reached by this Board or a court (in the event of judicial review). See Strycker's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227-28 (1980), and cases cited. We have long stated that BLM's decision to go forward will not be overturned unless it is shown, by a preponderance of the evidence, that it failed to consider or to adequately consider a "substantial environmental question of material significance." SUWA, 127 IBLA 331, 350, 100 Interior Dec. 370, 380 (1993).

When BLM decides to lease public lands, it is required to consider the potential impacts not only of leasing but also of exploration and development under the lease since, by leasing, it has made an irretrievable commitment to permit such activity, in some form and to some extent. Sierra Club v. Peterson, 717 F.2d 1409, 1414-15 (D.C. Cir. 1983). However, we

are not persuaded that the final EIS (FEIS) in this case did not provide an adequate analysis of the site-specific impacts of issuance of an oil and gas lease for parcel No. COC-55739.

Under its proposed action alternative, BLM considered a varied program of leasing and no leasing in the Little Snake Resource Area: 765,610 acres (Standard Terms), 388,650 acres (Controlled Surface Use), 860,220 acres (Timing Limitation), 57,894 acres (No Surface Occupancy), and 35,380 acres (No Leasing). (FEIS at 2-13 through 2-15, 2-26.) Such leasing/no leasing was further broken down on the basis of four regions in the Resource Area, which were defined by their relative potential for producing oil and gas and identified on a map of the area. Id. The BLM also projected that there would be a total of 550 wildcat and development wells, distributed primarily in the regions with moderate to high oil and gas potential, which would disturb a total of 6,672 acres at any one time and 12,350 acres over the 20-year life of the plan. Id. at 2-2, B-2. Moreover, the FEIS demonstrates that BLM considered the impact of oil and gas leasing and subsequent oil and gas exploration and development throughout the 5.145-million acre study area. Also, BLM thoroughly reviewed the many specific potential environmental impacts taking into account the diversity of land, plant and animal species, and other environmental factors across that area. Id. at 2-31, 3-1 through 3-36, and 4-1 through 4-31.

The CEC asserts that parcel No. COC-55739 contains lands which serve to distinguish it from the other lands expressly addressed in the FEIS. However, CEC has presented no evidence that the 1,284.56-acre parcel, as opposed to the entire or other portions of the Vermillion Basin area, is so distinct that we can conclude that BLM overlooked a particular site-specific impact that would be experienced in that parcel alone.

We therefore conclude that, in determining the environmental consequences of leasing parcel No. COC-55739 or any of the other land examined during preparation of the FEIS and found suitable for leasing with surface occupancy, BLM was not required to consider the impact of leasing on possible designation by Congress of non-WSA land as wilderness, especially where such designation had not even been formally proposed at the time BLM prepared its FEIS. See SUWA, 128 IBLA at 65-66. That impact was "remote and highly speculative" and, therefore, did not warrant environmental analysis. Trout Unlimited v. Morton, 509 F.2d at 1283.

Moreover, we find nothing in Smith v. U.S. Forest Service, 33 F.3d 1072 (9th Cir. 1994), cited by CEC, which requires BLM to do anything more than it has done. The court in Smith did not require the Forest Service, which was deciding whether to permit a timber sale, to address the effect of that action on possible wilderness designation by Congress. At best, the court in Smith stated, as quoted by CEC, that "the possibility of future wilderness classification triggers, at the very least, an obligation on the part of the agency to disclose the fact that development will affect a 5,000 acre roadless area." (Supplemental Authority and Statement at 3 (quoting from Smith v. U.S. Forest Service, 33 F.3d at 1078) (emphasis added).) The court was speaking of a 6,246-acre roadless area, of which 4,246 acres had never been inventoried by the Forest Service for potential

designation as wilderness, and 2,000 acres had been so inventoried but then rejected by Congress for wilderness designation. See Smith v. U.S. Forest Service, 33 F.3d at 1074, 1077. In these circumstances, the court concluded that the Forest Service should at least "acknowledge the existence of the 5,000 acre roadless area," and that development might affect it, where that area had never before been recognized. Id. at 1079.

In the present case, we are not faced with a roadless area of more than 5,000 acres which had never been inventoried and acknowledged by BLM. Rather, most of the entire Vermillion Basin (North Unit), including a small portion of parcel No. COC-55739, was inventoried and found unsuitable for potential wilderness designation. Having made this determination, BLM is not now required to reconsider how leasing, and potential oil and gas exploration and development, may affect its suitability as a wilderness area.

Above all, CEC has failed to identify any potential significant environmental impact, site-specific or otherwise, that was not adequately addressed in the FEIS. We therefore conclude that CEC has failed to demonstrate, by a preponderance of the evidence, that BLM failed to consider or to adequately consider a "substantial environmental question of material significance." SUWA, 127 IBLA at 350, 100 Interior Dec. at 380. Nor are we persuaded that there is any new circumstance or information, arising since preparation of the FEIS, which indicates that there may be a significant environmental impact not previously considered, thus requiring preparation of a supplemental EIS. See 40 C.F.R. § 1502.9(c); Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 374 (1989); CEC, 130 IBLA 61, 67-68 (1994).

Accordingly, we find that BLM did not violate section 102(2)(C) of NEPA by not preparing a site-specific EIS addressing significant environmental impacts of leasing parcel No. COC-55739. The CEC has failed to demonstrate that the present case differs from Ventling v. Bergland, 479 F. Supp. 174, 180 (D.S.D.), aff'd, 615 F.2d 1365 (8th Cir. 1979), wherein the court said: "[W]here [a] programmatic EIS is sufficiently detailed, and there is no change in circumstances or departure from the policy in the programmatic EIS, no useful purpose would be served by requiring a site-specific EIS."

Finally, CEC contends that, by deciding to proceed with lease issuance, BLM is violating its ecosystem policy, as expressed in a document entitled "Ecosystem Management in the BLM: From Concept to Commitment." (Ex. J attached to SOR; SOR at 12, 14.) That policy, according to CEC, is to "manage the public lands to sustain natural ecological processes and functions." Id. at 13 (quoting from Ex. J at 3). The CEC, however, has failed to show that issuing a lease for parcel No. COC-55739 is contrary to this policy.

We, therefore, conclude that the State Director, in his November 1993 Decision, properly denied CEC's protest to the proposed issuance of an oil and gas lease for parcel No. COC-55739. See CEC, 125 IBLA 210, 222 (1993).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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John H. Kelly
Administrative Judge

I concur:

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R.W. Mullen
Administrative Judge